APPENDIX

Supreme Court, U. S.
FILED
JAN 26 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977
No. 76-1031

GEORGE PAPPAGEORGE,

Defendant and Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent.

APPEAL FROM
SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
AND COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI
FILED OCT. 26, 1976

JAMES JOSEPH LEWIS
16133 Ventura Boulevard
Penthouse
Encino, California 91316
(213) 783-0222 or 783-0225

Attorney for Petitioner
GEORGE PAPPAGEORGE

APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977
No. 76-1031

GEORGE PAPPAGEORGE,

Defendant and Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent.

APPEAL FROM
SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
AND COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI
FILED OCT. 26, 1976

JAMES JOSEPH LEWIS
16133 Ventura Boulevard
Penthouse
Encino, California 91316
(213) 783-0222 or 783-0225

Attorney for Petitioner
GEORGE PAPPAGEORGE

INDEX TO APPENDIX

		Page
Contents of Appendix		
I.	OPINION AFFIRMING CONVICTION (NOT FOR PUBLICATION) FILED AUGUST 20, 1976	1
II.	PETITION FOR REHEARING DENIED (SEPTEMBER 15, 1976)	10
III.	HEARING DENIED -- SUPREME COURT OF CALIFORNIA (OCTOBER 28, 1976)	10

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. GEORGE PAPPAGEORGE, Defendant and Appellant.	Crim. No. 28206 (Superior Court No. A309048)

APPEAL from a judgment of the Superior Court of Los Angeles County. Alfred W. Dibb, Judge. Affirmed.

John H. Marshall for Defendant and Appellant.

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, Susanne C. Wylie and Roger W. Boren, Deputy Attorneys General, for Plaintiff and Respondent.

A 5-count amended information charged defendant with (count I) the kidnaping of Donovan Hargens for the purpose of robbery, in violation of Pen. Code 209, a felony, committed on 4 Apr 72; (count II) burglary of an inhabited dwelling house, occupied by Donovan Hargens, in violation of Pen. Code § 459, a felony, committed on 4 Apr 72; (count III) robbery on 4 Apr 72 of Donovan Hargens in violation of Pen. Code § 211, a felony; (count IV) robbery on 10 Apr 72 of Robert Laske and Robert Baumgartner, in violation of Pen. Code § 211, a felony; and (count V) conspiracy to violate Pen. Code §§ 211, 209 and 459, in violation of Pen. Code § 182, subd. (1). Defendant pled not guilty on all counts, with a finding of first degree as to counts II, III and IV. Defendant was given concurrent sentences on all counts, with a stay of execution being granted as to count V, until completion of sentences on counts I and IV, following which the stay was to become permanent. Defendant appeals from the judgment, from the denial of his motion for a new trial and from denial of his Pen. Code § 1538.5 motion. However, since defendant's brief on appeal does not mention either motion, we assume the appeal on each is abandoned and, in any event, there is no right to appeal from denial of a motion for new trial, although we may review it on appeal (Pen. Code § 1237).

According to the evidence, Donovan Hargens owned "Don's Market" located in Pasadena. On April 4, 1972, at approximately 1:45 p.m., he took the store's receipts and drove to a bank to deposit them. In the bank's parking lot he was held up by a man who was about 5'-11" tall,

well-built and fairly strong looking, a "hippie" sort of person with "tattle-tale gray" hair. He could not say whether the man was, or was not, Ronald Hayward.

Hargens wore glasses and had poor vision without them. Somehow, his glasses were knocked off of his nose when Hargens was placed face down in his own car and driven to his house, where another car and male driver quickly appeared. Thereafter, the two men handcuffed Hargens to his car's steering wheel, placed a gag in his mouth and removed the cable from his car's battery. The newest arrival entered Hargens' house and removed a number of items from it, putting them into the second automobile. The man who could have been Hayward remained with Hargens most of the time. Later, Hargens freed himself and found that many things were missing from his house, including his wife's fur.

On April 10, 1972, Baumgartner was employed as a bartender at Carson's Cocktail Lounge in Pasadena. On that date, he arrived at the bar at 7:00 a.m. and opened the rear door to be met by a man with a pistol. Inside the premises was the robber's "accomplice" and Mr. Laske, the clean-up man employed by the bar. The two robbers took money from the bar's safe and from Baumgartner. The man with the gun was about 5'-9" or 5'-10" tall, weighed approximately 160 pounds, had dark skin, and hair down to about his collar. After the hold-up, the robbers handcuffed Laske and Baumgartner to the bar rail, using what might be "Detective Special Romo" handcuffs.

Defendant raises four contentions. First, he contends the trial court prejudicially erred by admitting the testimony of Alvin Timmons, regarding "the explosives and TNT." Timmons testified as a prosecution witness under grant of immunity. (Pen. Code § 1324.) He testified to a conversation with defendant in which defendant asked him to remove items from a car belonging to Kenneth Moran saying there were explosives in the car. Defendant told Timmons that the key to the car and its trunk was located on top of the left front tire, also stating that "He had a few items of explosives and some dynamite fuses on a utility trunk...there at the gas station." Timmons drove to defendant's gas station and picked up the explosives and fuses, then went to Moran's car and removed several hundred pounds "of mixed dynamite and TNT." In the car also was a "satchel," like a briefcase, that contained a fur coat. The boxes of dynamite were covered with covers used by a U-Haul company. Defendant operated a U-Haul business. Timmons took the explosives to his own home and tried to dissolve the dynamite in water. He was unsuccessful. He told defendant of this and defendant gave him a 5-gallon container of a liquid to see if it would dissolve the gelatin dynamite. It did not. Timmons then loaded the explosives back into his vehicle and dumped them over the mountainside above Altadena. Defendant knew that Timmons had dumped the explosives in the mountains but did not know exactly where. Accordingly, Timmons prepared a detailed map and marked the precise location, giving the map to defendant.

Whether this evidence was correctly or incorrectly received is immaterial in view of Evid. Code § 353 which requires that an objection be so stated as to make clear "the specific ground of the objection." No objection such as that mentioned in appellant's opening brief and in Evid. Code § 353, was made by defendant. Accordingly, we cannot review any error allegedly committed by the trial court in this respect and we cannot speculate as to what the trial court might have ruled, had there been an appropriate objection.

Defendant next claims prejudicial court error in admitting the testimony of Hayward "explaining his delay in reporting the crimes to the police wherein he unnecessarily gave evidence of the commission of other crimes -- to wit, the defendant's dominion and control over explosives."

We repeat our answer to this argument inasmuch as defendant repeats his argument regarding the point he first raised. Thus, it was stated: "Q Incidentally, before we go any further, the other matter you were in jail for, that was the assault against Mr. Pudinski, the commissioner of the Highway Patrol, is it not? A Yes." At the bench the following occurred:

"MR. MARSHALL (defendant's attorney): I will object to this testimony and ask it be stricken and the jury admonished to disregard it.

"We are interested in these crimes which are charged against this defendant

and not in the career of this person here.

"I do not know what purpose he is asking these questions for, but he is going into other matters, and it is beyond the scope of this trial completely.

"MR. WATSON (the prosecutor): Your Honor, in the last trial we went into every excruciating detail, and the reason was at the defense insistence."

The People's response, i.e., that at a prior trial this issue was covered, hardly constitutes an answer to the question, but the fact remains that defendant made no objection such as that now raised.

Defendant's penultimate contention is that the prosecutor committed prejudicial misconduct in his closing argument to the jury. We disagree. Appellant recites from page 876 of the reporter's transcript, regarding the prosecutor's argument, as follows:

"Mr. Timmons, he's got as an accomplice somehow. I didn't follow the reasoning, if there was any. Mr. Timmons did do something wrong, moving all that merchandise that he told you about. That's obviously wrong. And for that reason, he probably needs immunity. But an accomplice is somebody that is liable to prosecution for the same crimes as the defendant."

Defendant then states that "The record does not disclose a then objection by defense counsel, but non-objection cannot constitute waiver of the point."

Defendant then cites People v. Ford, 89 Cal.App.2d 467 (1948) as standing for the proposition that a reviewing court's duty is to protect the substantial right of the accused, adding "Indeed, in the circumstances of this case it would have been bad defense tactics to have made an objection...."

We, too, are unable to follow defense counsel's reasoning since there was no evidence that Timmons was subject to prosecution for Hargens' robbery. Hargens' kidnaping, the burglary at Hargens' house, the Carson Cocktail robbery or any conspiracy. Timmons was not an accomplice. Defendant refers us to page 747 of the reporter's transcript as showing a conflict with the instruction which the court gave, namely, CALJIC instruction No. 2.09. However, the court specifically referred to Ronald Hayward, not to Timmons, and we so view the instruction. Thus, defendant's citation of People v. Ford, is inapropos. We conclude there was no misconduct by the prosecution.

Last, defendant contends the conviction rests upon the testimony of Hayward, an accomplice, and that the record contains no corroboration of him, as required by Pen. Code § 1111. Conceding that Hayward's was the only evidence directly connecting defendant with the crime, we look to ascertain if the evidence reflects any corroboration, bearing in mind the rules relating to corroboration. The rules are thus stated in People v. Perry, 7 Cal.3d 756 at p. 769 (1972): "To corroborate the testimony of an accomplice, the prosecution must

produce independent evidence which, without aid or assistance from the testimony of the accomplice, tends to connect the defendant with the crime charged. (Citation.) 'The evidence need not corroborate the accomplice as to every fact to which he testifies but is sufficient if it does not require interpretation and direction from the testimony of the accomplice yet tends to connect the defendant with the commission of the offense in such a way as reasonably may satisfy a jury that the accomplice is telling the truth; it must tend to implicate the defendant and therefore must relate to some act or fact which is an element of the crime but it is not necessary that the corroborative evidence be sufficient in itself to establish every element of the offense charged.' (Citations.) 'Although the corroborating evidence must do more than raise a conjecture or suspicion of guilt, it is sufficient if it tends in some degree to implicate the defendant.' (Citation.) '(T)he corroborative evidence may be slight and entitled to little consideration when standing alone.' (Citation.)"

There was evidence satisfying the foregoing rule. Thus, there was the handcuff evidence, which defendant attacks as being incredible, in effect asking us to secondguess the jury's determination to the contrary. There also was evidence that a check, perhaps stolen from Carson's, had been seen in defendant's trash. A fur coat or or stole taken from Hargens' home, was recovered from the briefcase, or satchel, in Moran's automobile, to which automobile Timmons was guided by defendant. There also was

evidence regarding a silver candelabra taken from the Hargens' home during the burglary.

Recalling that all reasonable inferences the jury may draw are entitled to a presumption in favor of the verdict, we affirm it.

The judgment is affirmed.

NOT FOR PUBLICATION

DUNN, J.

We concur:

KINGSLEY, Acting P.J.

JEFFERSON (Bernard), J.

Los Angeles, Cal. SEP 15 1976, 19

TITLE { PEOPLE / vs. PAPPAGEORGE } No. 28206

THE COURT:

PETITION FOR REHEARING DENIED.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

OCT 28 1976

I have this day filed Order

HEARING DENIED

In re: 2 Crim. No. 28206
People
vs.
Pappageorge

Respectfully,

G. E. BISHEL
Clerk

CLAY ROBBINS, Clerk

40748-877 3-76 3M OSP